

REMARKS

This paper is a substitute for a prior amendment not entered. Claims 1-10, 12-14, 18-20, 22-23, 25-29, 33 and 60-63 are active. Claims 11, 15-17, 21, 24, 30-32, 34-59, and 64-138 are canceled. Claims 1-3, 7-9, 13, 14, 18, 20, 23, 25, 28, 29, 33, 60-63 are rejected under 35 USC 102e as being anticipated by Anderson et al. Claims 4-6, 10-12, 19, 22, 26, and 27 are rejected under 35 USC 103 as being unpatentable over Anderson 6,200,347.

Applicants are in receipt of an advisory action dated June 23, 2004 wherein applicants' prior response under 37CFR 1.116 was not entered. The undersigned had a telephone interview with the Examiner Mr. Willse on June 28, 2004 in regard to the Advisory Action and the status of the claims. Applicants' undersigned attorney suggested some changes to claims 60 and 62 and the Examiner suggested a change to claim 62. The Examiner indicated that amended claim 1 per the prior response and repeated herein and the suggested changes to claims 60 and 62 made herein in addition to the prior amendment would place the application in condition for allowance providing the rejected claims are canceled. The undersigned proposed canceling the rejected claims. The Examiner agreed the application with claims 60 and 62 amended per the amendments made herein would make the application allowable.

For purposes of being complete, the prior response regarding claims 1, 60

and 62 are repeated hereinbelow.

Claims 1, 60, 62

Amended claim 1 calls for:

A spinal fusion implant for fusing together two adjacent vertebra comprising:
a first member having first and second opposing sides and a first bore defining a central longitudinal first axis, the first bore being in communication with at least the first side;
a second member having third and fourth opposing sides and a second bore in communication with at least the third side, the second bore defining a second central longitudinal axis, the first and second axes forming a first pair; and
an elongated first pin located in the first and second bores for securing the first member to the second member at the interface formed by the facing first and third respective sides, the pin having first and second sections and at least one first outermost peripheral surface defining a first transverse dimension therebetween at the first section defining a third central longitudinal axis, the pin having at least one second outermost peripheral surface defining a second transverse dimension therebetween at the second section defining a fourth central longitudinal axis, the third and fourth axes forming a second pair; one axis of at least one of the first and second pair of axes being offset relative to the other axis of the at least one pair of axes so as to place the pin in relative compression and tension in the first and second bores for providing a compressive load on the surface of the first and second bores to frictionally secure the members together (underlining added)

The applicants' undersigned attorney and the Examiner had a telephone interview on April 22, 2004 in which the undersigned requested that the Examiner explain the Office Action basis for the continued rejection of claim 1 over Anderson as this was not understood. During that interview, the Examiner explained that the

basis for his conclusion is Fig. 16 of Anderson which shows a pin with bifurcated leg portions. He stated that this pin anticipated original claim 1. He stated that each of the leg portions has a longitudinal axis that is offset from the axis of the solid portion of the pin from which the legs depend. Each leg forms a section as claimed. He stated that when the pin is larger in diameter than the bore, col. 28, line 55, that the leg portions will bend and when bent will cause both tension and compression in the legs. He stated that this figure thus meets claim 1.

A further portion of that interview is also reflected in an Office paper dated April 23, 2004. This paper summarizes a telephone proposal by applicants to amend the claims regarding the pin and implant bores offset relationship to overcome Anderson. In particular, it was proposed that the third and fourth central longitudinal axes are respectively defined by a first and second transverse dimensions between the outermost surfaces of the pin. The Examiner agreed that this structure would distinguish over Anderson. This structure is showed by the underlined portions of amended claim 1. Similar changes were proposed for claims 60 and 62 and are included in amended claims 60 and 62 herein.

The above amended claim 1, and amended claims 60 and 62 include the proposed subject matter of the various telephone interviews. These claims are believed to distinguish over Anderson since each of the legs of Anderson's Fig. 16 embodiment defines a longitudinal axis using an interior surface and not an

outermost peripheral surface of the pin. The legs together may define a longitudinal axis based on their combined outer peripheral surfaces, but this latter axis is not offset from the axis of the solid head portion of the pin from which the legs depend. For these reasons, claim 1 is believed allowable.

Claims 60 and 62 include structure that also distinguishes over Anderson similarly as claim 1. These claims are amended also per the interviews including that of June 28, 2004 in which the Examiner indicated the proposed amendments made herein would overcome the objections in the Advisory Action of June 23, 2004. These claims are believed allowable.

As a result, claims 1, 60 and 62 are amended per the various telephone interviews, are believed allowable and claims 11, 15-17, 21, 24, 30-32, 34-59, and 64-138 are canceled.

For the reasons given herein, claims 1-3, 7-9, 13, 14, 18, 20, 23, 25, 28, 29, 33, 60-63 are believed allowable.

Since this application is in condition for allowance, such action is respectfully requested.

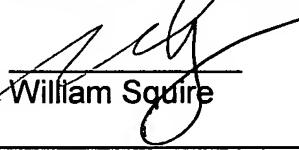
Enclosed is a request for a one month extension of time and a check in the amount of \$55 for this request.

The Commissioner is authorized to charge any additional fees due for this paper or credit any overpayments to Deposit Account No. 03-0678.

FIRST CLASS CERTIFICATE

I hereby certify that this correspondence is being deposited today with the U.S. Postal Service as First Class Mail in an envelope addressed to:

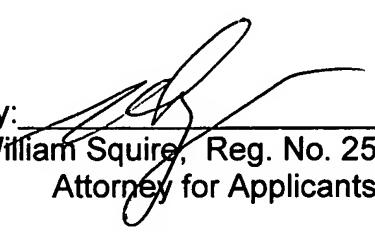
Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450


William Squire

June 28, 2004
Date

204862v2

Respectfully submitted,
Lawrence A. Shimp et al.

By: 
William Squire, Reg. No. 25,378
Attorney for Applicants

Phone: 973-994-1700
Fax: 973-994-1744